

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1094

FINAL READING

Introduced by Lathrop, 12; Lautenbaugh, 18.

Read first time January 21, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to consumer protection; to amend section
2 84-907.03, Revised Statutes Supplement, 2009; to adopt
3 the Nonrecourse Civil Litigation Act; to provide powers
4 and duties for the Secretary of State; to harmonize
5 provisions; and to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and
2 may be cited as the Nonrecourse Civil Litigation Act.

3 Sec. 2. For purposes of the Nonrecourse Civil Litigation
4 Act:

5 (1) Civil litigation funding company means a person or
6 entity that enters into a nonrecourse civil litigation funding
7 transaction with a consumer;

8 (2) Consumer means a person residing or domiciled in
9 Nebraska or who elects to enter into a transaction under the act,
10 whether it be in person, over the Internet, by facsimile, or by
11 any other electronic means, and who has a pending legal claim and
12 is represented by an attorney at the time he or she receives the
13 nonrecourse civil litigation funding;

14 (3) Legal claim means a civil claim or action; and

15 (4) Nonrecourse civil litigation funding means a
16 transaction in which a civil litigation funding company purchases
17 and a consumer assigns the contingent right to receive an amount of
18 the potential proceeds of the consumer's legal claim to the civil
19 litigation funding company out of the proceeds of any realized
20 settlement, judgment, award, or verdict the consumer may receive
21 in the legal claim.

22 Sec. 3. (1) All contracts for nonrecourse civil
23 litigation funding shall comply with the following requirements:

24 (a) The contract shall be completely filled in and
25 contain on the front page, appropriately headed and in at least

1 twelve-point bold type, the following disclosures:

2 (i) The total dollar amount to be funded to the consumer;

3 (ii) An itemization of one-time fees;

4 (iii) The total dollar amount to be repaid by the
5 consumer, in six-month intervals for thirty-six months, and
6 including all fees;

7 (iv) The total dollar amount in broker fees that are
8 involved in the transaction; and

9 (v) The annual percentage rate of return, calculated as
10 of the last day of each six-month interval, including frequency of
11 compounding;

12 (b) The contract shall provide that the consumer may
13 cancel the contract within five business days following the
14 consumer's receipt of funds without penalty or further obligation.

15 The contract shall contain the following notice written in a clear
16 and conspicuous manner: "CONSUMER'S RIGHT TO CANCELLATION: YOU MAY
17 CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN
18 FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM (insert
19 name of civil litigation funding company)." The contract also shall
20 specify that in order for the cancellation to be effective, the
21 consumer shall either return the full amount of disbursed funds
22 to the civil litigation funding company by delivering the civil
23 litigation funding company's uncashed check to the civil litigation
24 funding company's offices in person, within five business days
25 after the disbursement of funds, or mail a notice of cancellation

1 and include in that mailing a return of the full amount of
2 disbursed funds in the form of the civil litigation funding
3 company's uncashed check or a registered or certified check or
4 money order, by insured, registered, or certified United States
5 mail, postmarked within five business days after receiving funds
6 from the civil litigation funding company, to the address specified
7 in the contract for the cancellation;

8 (c) The contract shall contain the following statement in
9 at least twelve-point boldface type: "THE CIVIL LITIGATION FUNDING
10 COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY
11 DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING LEGAL CLAIM
12 OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE
13 THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE
14 LEGAL CLAIM.";

15 (d) The contract shall contain an acknowledgement by
16 the consumer that such consumer has reviewed the contract in its
17 entirety;

18 (e) The contract shall contain the following statement in
19 at least twelve-point boldface type located immediately above the
20 place on the contract where the consumer's signature is required:
21 "DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT
22 CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED
23 IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD
24 OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES,
25 YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING,

1 OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN
2 THE LEGAL CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT
3 PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION.";

4 (f) The contract shall contain a written acknowledgment
5 by the attorney representing the consumer in the legal claim that
6 states all of the following:

7 (i) The attorney representing the consumer in the legal
8 claim has reviewed the contract and all costs and fees have
9 been disclosed including the annualized rate of return applied to
10 calculate the amount to be paid by the consumer;

11 (ii) The attorney representing the consumer in the legal
12 claim is being paid on a contingency basis per a written fee
13 agreement;

14 (iii) All proceeds of the civil litigation will be
15 disbursed via the trust account of the attorney representing the
16 consumer in the legal claim or a settlement fund established to
17 receive the proceeds of the civil litigation from the defendant on
18 behalf of the consumer;

19 (iv) The attorney representing the consumer in the legal
20 claim is following the written instructions of the consumer with
21 regard to the nonrecourse civil litigation funding;

22 (v) The attorney representing the consumer in the legal
23 claim shall not be paid or offered to be paid commissions or
24 referral fees; and

25 (vi) Whether the attorney representing the consumer in

1 the legal claim does or does not have a financial interest in the
2 civil litigation funding company; and

3 (g) All contracts to the consumer shall have in plain
4 language, in a box with bold fifteen-point font stating the
5 following in capitalized letters: "IF THERE IS NO RECOVERY OF ANY
6 MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY
7 THE CIVIL LITIGATION FUNDING COMPANY BACK IN FULL, YOU WILL NOT
8 OWE THE CIVIL LITIGATION FUNDING COMPANY ANYTHING IN EXCESS OF YOUR
9 RECOVERY UNLESS YOU HAVE VIOLATED THIS PURCHASE AGREEMENT."

10 (2) If a dispute arises between the consumer and the
11 civil litigation funding company concerning the contract for
12 nonrecourse civil litigation funding, the responsibilities of the
13 attorney representing the consumer in the legal claim shall be
14 no greater than the attorney's responsibilities under the Nebraska
15 Rules of Professional Conduct.

16 Sec. 4. (1) The civil litigation funding company shall
17 not pay or offer to pay commissions or referral fees to any
18 attorney or employee of a law firm or to any medical provider,
19 chiropractor, or physical therapist or their employees for
20 referring a consumer to the civil litigation funding company.

21 (2) The civil litigation funding company shall not accept
22 any commissions, referral fees, or rebates from any attorney or
23 employee of a law firm or any medical provider, chiropractor, or
24 physical therapist or their employees.

25 (3) The civil litigation funding company shall not

1 advertise false or intentionally misleading information regarding
2 such company's product or services.

3 (4) The civil litigation funding company shall not
4 knowingly provide nonrecourse civil litigation funding to a
5 consumer who has previously sold and assigned an amount of such
6 consumer's potential proceeds from the legal claim to another
7 civil litigation funding company without first buying out that
8 civil litigation funding company's entire accrued balance unless
9 otherwise agreed in writing by the civil litigation funding
10 companies and the consumer.

11 Sec. 5. (1) A civil litigation funding company may not
12 assess fees for any period exceeding thirty-six months from the
13 date of the contract with the consumer.

14 (2) Fees assessed by the civil litigation funding company
15 shall compound at least semiannually but shall not compound based
16 on any lesser time period.

17 (3) In calculating the annual percentage fee or rate
18 of return, a civil litigation funding company shall include all
19 charges payable directly or indirectly by the consumer and shall
20 compute the rate based only on amounts actually received and
21 retained by a consumer.

22 Sec. 6. No communication between the attorney and the
23 civil litigation funding company as it pertains to the nonrecourse
24 civil litigation funding contract shall limit, waive, or abrogate
25 the scope or nature of any statutory or common-law privilege,

1 including the work-product doctrine and the attorney-client
2 privilege.

3 Sec. 7. (1) Unless a civil litigation funding company has
4 first registered pursuant to the Nonrecourse Civil Litigation Act,
5 the civil litigation funding company cannot engage in the business
6 of nonrecourse civil litigation funding.

7 (2) A civil litigation funding company shall submit an
8 application of registration to the Secretary of State in a form
9 prescribed by the Secretary of State. An application filed under
10 this subsection is a public record and shall contain information
11 that allows the Secretary of State to make an evaluation of the
12 character, fitness, and financial responsibility of the company
13 such that the Secretary of State may determine that the business
14 will be operated honestly or fairly within the purposes of the act.
15 For purposes of determining a civil litigation funding company's
16 character, fitness, and financial responsibility, the Secretary of
17 State shall request a company to submit: A copy of the company's
18 articles of incorporation, articles of organization, certificate
19 of limited partnership, or other organizational documents; proof
20 of registration with a Nebraska registered agent; and proof of a
21 surety bond or irrevocable letter of credit issued and confirmed
22 by a financial institution authorized by law to transact business
23 in the State of Nebraska that is equal to double the amount of
24 the largest funding in the past calendar year or fifty thousand
25 dollars, whichever is greater.

1 (3) A civil litigation funding company may apply to
2 renew a registration by submitting an application for renewal in
3 a form prescribed by the Secretary of State. An application filed
4 under this subsection is a public record. The registration shall
5 contain current information on all matters required in an original
6 registration.

7 Sec. 8. (1) An application for registration or renewal
8 of registration under section 7 of this act shall be accompanied
9 by either an application for registration fee or a renewal of
10 registration fee, as applicable.

11 (2) The Secretary of State may, by rule and regulation,
12 establish fees for applications for registration and renewals
13 of registration at rates sufficient to cover the costs of
14 administering the Nonrecourse Civil Litigation Act, in the event
15 any such fees are required. Such fees shall be collected by the
16 Secretary of State and remitted to the State Treasurer for credit
17 to the Secretary of State Administration Cash Fund.

18 Sec. 9. (1) The Secretary of State shall issue a
19 certificate of registration to a civil litigation funding company
20 who complies with subsection (2) of section 7 of this act or a
21 renewal of registration under subsection (3) of section 7 of this
22 act.

23 (2) The Secretary of State may refuse to issue a
24 certificate of registration if the Secretary of State determines
25 that the character, fitness, or financial responsibility of the

1 civil litigation funding company are such as to warrant belief that
2 the business will not be operated honestly or fairly within the
3 purposes of the Nonrecourse Civil Litigation Act.

4 (3) The Secretary of State may suspend, revoke, or refuse
5 to renew a certificate of registration for conduct that would have
6 justified denial of registration under subsection (2) of section 7
7 of this act or for violating section 4 of this act.

8 (4) The Secretary of State may deny, suspend, revoke,
9 or refuse to renew a certificate of registration only after
10 proper notice and an opportunity for a hearing. The Administrative
11 Procedure Act applies to the Nonrecourse Civil Litigation Act.

12 (5) The Secretary of State may issue a temporary
13 certificate of registration while an application for registration
14 or renewal of registration is pending.

15 (6) The Secretary of State shall require a civil
16 litigation funding company registered pursuant to the act to
17 annually submit certain data, in a form prescribed by the Secretary
18 of State that contains:

19 (a) The number of nonrecourse civil litigation fundings;

20 (b) The amount of nonrecourse civil litigation fundings;

21 (c) The number of nonrecourse civil litigation fundings
22 required to be repaid by the consumer;

23 (d) The amount charged to the consumer, including, but
24 not limited to, the annual percentage fee charged to the consumer
25 and the itemized fees charged to the consumer; and

1 (e) The dollar amount and number of cases in which the
2 realization to the civil litigation funding company was less than
3 contracted.

4 (7) The Secretary of State shall annually prepare and
5 submit a report to the Clerk of the Legislature and to the
6 Judiciary Committee of the Legislature on the status of nonrecourse
7 civil litigation funding activities in the state. The report
8 shall include aggregate information reported by registered civil
9 litigation funding companies.

10 Sec. 10. Section 84-907.03, Revised Statutes Supplement,
11 2009, is amended to read:

12 84-907.03 There is hereby created the Secretary of State
13 Administration Cash Fund. The fund shall consist of revenue
14 received to defray costs as authorized in sections 84-901 to
15 84-908 and section 8 of this act. The revenue shall be collected
16 by the Secretary of State and remitted to the State Treasurer
17 for credit to the fund. The fund shall be used to (1) offset
18 expenses incurred as a result of ~~such~~ sections 84-901 to 84-908,
19 (2) administer the Address Confidentiality Act, ~~and~~ (3) administer
20 the Nebraska Uniform Athlete Agents Act, and (4) administer the
21 Nonrecourse Civil Litigation Act.

22 Any money in the fund available for investment shall be
23 invested by the state investment officer pursuant to the Nebraska
24 Capital Expansion Act and the Nebraska State Funds Investment Act.

25 Sec. 11. Original section 84-907.03, Revised Statutes

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1 Supplement, 2009, is repealed.